

## **REMARKS**

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and the following commentary.

### **I. Status of the Claims**

Claims 1-45, 47-52, 54, 56-70 are cancelled without prejudice or disclaimer. Applicants reserve the right to file a continuing application as a vehicle for subject matter of any canceled claim. Applicants have added claim 71 to replace claim 49. The former is written in an independent form, incorporating recitations from claim 4, which the Examiner has indicated to be allowable. Claim 55 has been revised to correct a typographical error. Upon entry of this response, claims 46, 53, 55, and 71 will be pending.

### **II. Claim Objection**

The Examiner objected to claim 55 for the typographical error, presently corrected. Pursuant to the Examiner's suggestion, Applicants have revised claim 55 to recite "auxotrophic." Accordingly, the objection to claim 55 should be withdrawn.

### **III. Rejection of Claims under 35 U.S.C. § 102 (b) and 35 U.S.C. § 102 (e)**

The Examiner rejected claims 43, 44, 47, 48, 51, 52, 56, 58, 59, 61, 63, 64, 66, 68 and 69 for alleged anticipation by Dickely *et al* (WO95/10621) and Dickely *et al* (U.S. Patent 5,866,385), respectively. In order to advance prosecution, Applicants have opted to cancel these claims, without acquiescing to the stated rationale for the rejection. Applicants likewise reserve the right to file a continuing application to pursue cancelled subject matter.

### **IV. Rejection of Claims for Obviousness-Type Double Patenting**

The Examiner rejected claims 43, 44, 47, 48, 51, 52, 56, 58, 59, 61, 63, 64, 66, 68 and 69 for alleged, obviousness-type double patenting over the Dickely '385 patent. Again, Applicants

have opted to cancel these claims, in order to advance prosecution, without acquiescing to the stated rationale for the rejection. Applicants likewise reserve the right to file a continuing application to pursue cancelled subject matter.

## CONCLUSION

Applicants believe that the present application is in condition for allowance. Favorable reconsideration is requested, therefore. Also, Examiner Burkhart is invited to contact the undersigned directly, should any issue warrant further consideration.

The Commissioner is hereby authorized to charge any additional fees, which may be required regarding this application under 37 CFR §§ 1.16-1.17, and to credit any overpayment to Deposit Account No. 19-0741. Should no proper payment accompany the response, then the Commissioner is authorized to charge the unpaid amount to the same deposit account. If any extensions of time are needed for timely acceptance of submitted papers, Applicants hereby petition for such extension under 37 CFR §1.136 and authorizes payment of any such extensions fees from the deposit account.

Respectfully submitted,

Date 30 August 2007

By S. A. Bent

FOLEY & LARDNER LLP  
Customer Number: 22428  
Telephone: (202) 672-5404  
Facsimile: (202) 672-5399

Stephen A. Bent  
Attorney for Applicant  
Registration No. 29,768